

AVAILABILITY OF MODIFIED TEXT

NOTICE IS HEREBY GIVEN that the Structural Pest Control Board has proposed modifications to the text of section 1920 in Title 16 of the California Code of Regulations which were the subject of a regulatory hearing on July 15, 2005. A copy of the modified text is enclosed. Any person who wishes to comment on the proposed modifications may do so by submitting written comments on or before August 15, 2005 to the following:

Barbara Howe
Structural Pest Control Board
1418 Howe Avenue, Ste 18
Sacramento, CA 95825

DATED: July 28, 2005

Kelli Okuma, Registrar

STRUCTURAL PEST CONTROL BOARD

Modified Text

Changes to the originally proposed language is shown by double underline for new text and underline with strikeout for deleted text.

1920. Citations and Fines

(a) Authority to Issue Citations and Fines:

(1) The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain an order of abatement or an administrative fine ("fine") for violations of the statutes contained in the Structural Pest Control Act (commencing with Business and Professions Code Section 8500) or the regulations adopted by the Board.

(2) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statutes(s) or regulation(s) alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(b) Citation; Assessment of Fine:

Citations may be issued without the assessment of a fine. The amount of any fine to be levied by the Registrar or Deputy Registrar shall be no more than \$5,000. ~~The maximum amount of \$5,000 to be charged only if~~ For the issuance of a citation that includes an administrative fine in excess of \$2,500, the Registrar or Deputy Registrar shall determine that at least one or more of the following circumstances apply:

(1) the citation involves a violation that has an immediate relationship to the health and safety of another person;

(2) the cited person has a history of two or more prior citations of the same or similar violations;

(3) the citation involves multiple violations of the Act or these regulations that demonstrate a willful disregard of the law; and or

(4) the citation involves a violation or violations perpetrated against a senior citizen or disabled person with disability.

In determining whether a citation shall contain an order of abatement or a fine and if a fine is to be imposed, the Registrar or Deputy Registrar shall consider the following factors:

(1A) Gravity of the violation.

(2B) History of previous violations of the same or similar nature.

(3C) The good or bad faith exhibited by the cited person.

(4D) Evidence that the violation was willful.

(5E) The extent to which the cited person cooperated with the Board's investigation.

(6E) The extent to which the cited person has mitigated or attempted to mitigate any damage caused by his or her violation.

(7G) Such other factors as the Registrar or Deputy Registrar considers relevant.

(c) Citations for Unlicensed Practice:

The Registrar or Deputy Registrar of the Board is authorized to issue citations which may contain order of abatement or a fine against persons who are performing or who have performed services for which a structural pest control license is required under the Structural Pest Control Act. The citation issued under this section shall be separate from and in addition to any other civil or criminal remedies.

(d) Compliance with Orders of Abatement:

When a citation is not contested or if the citation is appealed and the person cited does not prevail, failure to comply with the order of abatement or to pay the fine in the citation within the time allowed by a licensee may result in disciplinary action being taken by the Board against the person cited, or where the cited person is unlicensed in appropriate judicial relief being taken against the person cited.

(e) Contest of Citations:

(1) In addition to requesting a hearing provided for in subdivision (b)(4) of section 125.9 of the code, (hereinafter "administrative hearing"), the person cited may, within ten (10) days after service or receipt of the citation, notify the Registrar or Deputy Registrar, as designated, in writing of his or her request for an informal conference with the designated Registrar or Deputy Registrar. The informal conference shall include at

least one, but no more than two, industry members of the Board, as designated by the Registrar.

(2) The informal conference shall be held within 60 days from the receipt of the request of the person cited. At the conclusion of the informal conference, the Registrar or Deputy Registrar may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The decision shall state in writing the reasons for the action and shall be served or mailed to the person within ten (10) days from the date of the informal conference. ~~This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.~~

(3) The person cited does not waive his or her request for ~~a-an administrative~~ hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the Registrar or Deputy Registrar. If the citation is dismissed after the informal conference, the request for ~~a-an administrative~~ hearing on the matter of the citation shall be deemed to be withdrawn. ~~If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of section 125.9 of the code. If the informal conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but not withdrawn. The cited person shall be entitled to an administrative hearing to contest the modified citation if he or she made a request in accordance with subdivision (b)(4) of section 125.9 of the code for an administrative hearing, within thirty (30) days after service of the original citation. The cited person shall not be entitled to an informal conference to contest a modified citation. If the cited person did not make a request for an administrative hearing after service of the original citation, the decision in the modified citation shall be considered a final order.~~

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

* Shaded area represents another pending rulemaking change waiting OAL approval.